

PROB 12C
(7/93)

Report Date: April 17, 2012

United States District Court

for the

Eastern District of WashingtonFILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 18 2012

JAMES R. LARSEN, CLERK
YAKIMA, WASHINGTON DEPUTY**Petition for Warrant or Summons for Offender Under Supervision**

Name of Offender: Phillip Gonzalez

Case Number: 2:06CR06016-001

Address of Offender:

Pasco, WA 99301

Name of Sentencing Judicial Officer: The Honorable Fred Van Sickle, Senior U.S. District Judge

Date of Original Sentence: 4/9/2007

Original Offense: Possession of an Unregistered Firearm, 26 U.S.C. § 5861

Original Sentence: Prison - 41Months;
TSR - 36 Months

Type of Supervision: Supervised Release

Asst. U.S. Attorney: James P. Hagarty

Date Supervision Commenced: 12/24/2009

Defense Attorney: To be determined

Date Supervision Expires: 12/23/2012

PETITIONING THE COURT**To issue a summons.**

The probation officer believes that the offender has violated the following condition(s) of supervision:

Violation Number Nature of Noncompliance

1

Mandatory Condition # 2: The defendant shall not commit another Federal, state, or local crime.**Supporting Evidence:** Phillip Gonzalez is considered in violation of his supervised release as he was driving with a suspended license and was driving while under the influence of alcohol and/or controlled substances on or about April 3, 2012. Mr. Gonzalez was arrested on the same date by Pasco police officers. He was charged with driving under the influence (DUI), third degree driving while license suspended, and hit and run unattended vehicle in Franklin County District Court case 2Z0331820.

According to the Pasco Police Department incident reports, officers responded to a call regarding a possible DUI and a vehicle that had gone off the road into a ditch. A witness observed the defendant exiting the car. The witness advised officers he had asked the defendant if he needed help to which the defendant stated he did not and someone was coming to help pull the car out. The witness left and contacted the police. Officers later had the witness return to positively identify the defendant as the occupant of the car.

Upon officers arriving at the scene, the defendant was located a short distance away from the vehicle and the vehicle in the ditch was found to be registered to the defendant. An officer observed, in plain view, an open can of Bud Light beer in the console cup holder.

Prob12C

Re: Gonzalez, Phillip

April 17, 2012

Page 2

The officer that approached Mr. Gonzalez could smell a strong odor of intoxicants coming from the defendant. The officer also observed the defendant had watery eyes and appeared to be intoxicated. The defendant agreed to submit to field sobriety tests, which he had a difficult time completing. He was then asked to submit to a portable breath test, which he refused. The defendant was found to have a suspended license. Mr. Gonzalez was detained, read his Miranda rights, and transported to the county jail. At the jail, he was again asked to submit to a breath alcohol test, which he again refused.

- 2 **Special Condition # 16:** You shall abstain from the use of illegal controlled substances, and shall submit to urinalysis testing, as directed by the supervising probation officer, but no more than six tests per month, in order to confirm continued abstinence from these substances.

Supporting Evidence: Phillip Gonzalez is considered in violation of his supervised release as he attempted to falsify submitted to a urinalysis test on or about April 5, 2012.

Mr. Gonzalez reported to the U.S. Probation Office on April 5, 2012, at which time he was instructed to submit a drug test. The defendant agreed and submitted a urine sample observed by Officer David McCary. The temperature strip on the urine collection bottle read 92 degrees. Officer McCary advised the defendant the temperature was an invalid reading for the urine sample. He asked the defendant if he had used another person's urine or a device. The defendant denied any wrongdoing, but then admitted he brought in a urine sample. Mr. Gonzalez removed an apparatus commonly known as a "whizzinator" used to evade drug tests. The apparatus was taken from the defendant and logged into evidence. The defendant was told he had to submit another sample. Mr. Gonzalez stated that although he could not recall what had happened the night he was arrested (4/3/2012), the urine sample might be positive for marijuana.

- 3 **Mandatory Condition # 4:** The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

Special Condition # 16: You shall abstain from the use of illegal controlled substances, and shall submit to urinalysis testing, as directed by the supervising probation officer, but no more than six tests per month, in order to confirm continued abstinence from these substances.

Supporting Evidence: Phillip Gonzalez is considered in violation of his supervised release as he used a controlled substance, marijuana, on or about April 5, 2012.

Mr. Gonzalez reported to the U.S. Probation Office on April 5, 2012, at which time he was instructed to submit a drug test. The defendant submitted a drug test and was found to be presumptive positive for marijuana. The urine sample was sent to Alere Laboratory, which confirmed the test was positive for marijuana. Mr. Gonzalez stated he had "partaken" of using marijuana not more than three times in the past 6 months. When asked when he last used, he said, "probably the night he was arrested" (4/3/2012), but he could not recall for sure.

Prob12C

Re: Gonzalez, Phillip

April 17, 2012

Page 3

4

Standard Condition # 7: The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.

Supporting Evidence: Phillip Gonzalez violated his supervised release by being under the influence of alcohol and/or controlled substances on or about April 3, 2012. As noted in violation #1, the defendant was contacted by police officers after he drove his vehicle into a ditch. The defendant refused to submit to a Breathalyzer, but the officer observed the defendant appeared to be intoxicated, he smelled strongly of intoxicants, he had an open beer can in the vehicle, and he advised this officer he probably used marijuana the night he was arrested. Although the defendant refused to submit to a Breathalyzer, his actions and behavior that night sufficiently address he consumed alcohol and/or controlled substances in excess.

The U.S. Probation Office respectfully recommends the Court issue a summons requiring the defendant to appear to answer to the allegations contained in this petition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 04/17/2012

s/SanJuanita B. Coronado


SanJuanita B Coronado
U.S. Probation Officer

THE COURT ORDERS

- ☐ No Action
- ☐ The Issuance of a Warrant
- ☒ The Issuance of a Summons
- ☐ Other



Signature of Judicial Officer


Date